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May 1, 2014

VIA ECF

The Honorable Sandra J. Feuerstein
United States District Judge
United States District Court for
the Eastern District of New York
100 Federal Plaza
Central Islip, New York 11722

**Re: Cecil Thomas et al. v. TXX Services, Inc. et al.
U.S. District Court for the Eastern District of New York
Civil Action No. 2:13-CV-02789-SJF-WDW**

Dear District Judge Feuerstein:

We represent Defendants TXX Services, Inc. ("TXX") and Patricia Hunt (collectively, "Defendants") in connection with the above-referenced action. We write in response to counsel for Plaintiffs' May 1, 2014 letter.

Plaintiffs' counsel contends that Defendants' Objections to Report and Recommendation of United States Magistrate Judge ("Objections"), filed on April 30, 2014, were not timely filed. This contention is without merit in fact or law and should be rejected summarily.

Pursuant to Rule 72(b) of the Federal Rules of Civil Procedure, objections to a magistrate judge's report and recommendation are due "[w]ithin 14 days after being served." Fed. R. Civ. P. 72(b)(2) (emphasis added). Magistrate Judge Wall's Report and Recommendation ("Report") was served on the parties electronically through the Court's CM/ECF system, pursuant to Rule 5(b)(2)(E). Therefore, Rule 6(d) applies, which notes that "[w]hen a party may or must act within a specified time after service and service is made under Rule 5(b)(2)(C), (D), (E), or (F), 3 days are added after the period would otherwise expire. . . ." Fed. R. Civ. P. 6(d) (emphasis added). Indeed, Magistrate Judge Wall's Report specifically cites to Rule 6(d) when explaining the parties' right to file objections. *See* Report at 10.

It is abundantly clear, by the plain application of the Federal Rules of Civil Procedure and the case law in this Court and other District Courts in the Second Circuit, that the

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deadline for filing objections to the Report was extended by three days under the application of Rule 6(d). *See, e.g., Allen v. United Parcel Serv., Inc.*, --- F. Supp. 2d ----, 2013 WL 6732688 at *2 (E.D.N.Y. Dec. 19, 2013) (“If an R & R is served electronically, as it was here, ‘3 days are added after the period would otherwise expire.’”) (citing Fed. R. Civ. P. 6(d)); *Green v. City of New York*, No. 05-cv-429(SLT)(ETB), 2010 WL 148128, at *3 n.1 (E.D.N.Y. Jan. 14, 2010) (noting that objections were timely filed because the magistrate judge’s report and recommendation was served electronically, which added an additional three days to the deadline); *see also Hernandez v. Napoli*, No. 08-CV-10454 (CS)(GAY), 2012 WL 1438240, at *1 (S.D.N.Y. Apr. 25, 2012) (recognizing that Rule 6(d) adds an additional three days for the deadline for objections to a magistrate judge’s recommendation when service is made electronically or by mail); *Goldstein v. Hulihan*, No. 09-CV-6824(CS)(PED), 2011 WL 4954038, at *1 (S.D.N.Y. Oct. 18, 2011) (same).

Therefore, all objections to Magistrate Judge Wall’s report were due on May 1, 2014, not on April 28, 2014 as Plaintiffs contend. Defendants’ April 30, 2014 Objections were thus timely and should be considered by the Court. For all of the reasons stated in the Objections, Defendants respectfully request that the Report be rejected and that the Court enter judgment in favor of Defendants.

Respectfully submitted,

/s/ Jeffrey W. Pagano

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